

**A. 149**

# **Excerpt of 9/17/08 Hearing Transcript**

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 17, 2008

4:28 PM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

1 HEARING re Debtor's Motion Pursuant to Section 1015(b) of the  
2 Federal Rules of Bankruptcy Procedure Requesting Joint  
3 Administration of Chapter 11 Cases

4  
5 HEARING re Motion for an Order Pursuant to Section 105(a) of  
6 the Bankruptcy Code Directing that Certain Orders in the  
7 Chapter 11 Case of Lehman Brothers Holdings Inc. be Made  
8 Applicable to LB 745 LLC

9  
10 HEARING re Debtor's Motion Pursuant to Section 105(a) of the  
11 Bankruptcy Code and Bankruptcy Rule 1015(c) and 9007 Seeking  
12 Authority to Implement Certain Notice and Case Management  
13 Procedures

14  
15 HEARING re Debtor's Motion to (a) Schedule a Sale Hearing; (b)  
16 Establish Sales Procedures; (c) Approve a Breakup Fee; and (d)  
17 Approve the Sale of the Purchased Assets and the Assumption and  
18 Assignment of Contracts Relating to the Purchased Assets

19  
20 HEARING re Motion for Order (i) Authorizing Debtor to Obtain  
21 Post-Petition Financing Pursuant to Sections 363 and 364 of  
22 Bankruptcy Code; (ii) Granting Liens and Superpriority Claims  
23 to Post-Petition Lenders Pursuant to Section 364 of Bankruptcy  
24 Code; and (iii) Scheduling Final Hearing

25 Transcribed by: Lisa Bar-Leib

1 hearing on this? That's why, Your Honor, we have come forward  
2 today. We want to go forward. And I would point out, Your  
3 Honor, we are not asking for any real substantive relief today  
4 with respect to the sale motion. We are asking Your Honor to  
5 set a hearing for Friday afternoon. And the only sensitive --  
6 I'll call it somewhat sensitive issue is the approval of the  
7 breakup fee.

8 Now, Your Honor, we are talking about a transaction  
9 that has, as I said, many, many parts. But looking at it from  
10 the net of this transaction, there will be approximately  
11 1,700,000,000 dollars yielded out of this transaction.

12 UNIDENTIFIED SPEAKER: A billion.

13 MR. MILLER: I'm sorry?

14 UNIDENTIFIED SPEAKER: A billion.

15 MR. MILLER: You know, I always think of Senator  
16 Dirksen, Your Honor. He said a billion here and a billion  
17 there. Pretty soon you're talking about real money.

18 THE COURT: Well, you're talking about real money  
19 here.

20 MR. MILLER: Absolutely, Your Honor. And so we have  
21 1,700,000,000 dollars. There has been an enormous effort put  
22 into this by the prospective purchaser, Barclays Capital, Your  
23 Honor. And in the negotiations, quite properly, with all of  
24 the efforts that they have put into it, there was a request --  
25 I should say a request, almost a demand, for a breakup fee.

1 And there were negotiations in respect of that amount. And  
2 what it came out to be, Your Honor, was a proposed breakup fee  
3 of a hundred million dollars plus reimbursement of expenses of  
4 up to twenty-five million dollars.

5 THE COURT: May I ask you a question --

6 MR. MILLER: Yes, sir.

7 THE COURT: -- about how to equate that breakup fee  
8 and expense reimbursement with the purchase price? And I've  
9 attempted to assess the notional value of the transaction  
10 because in addition to the 1.7 billion dollars, there's a  
11 reference to 1.5 billion dollars in cure amounts and possibly  
12 as much as 2.5 billion dollars in certain employee related --

13 MR. MILLER: Yes, sir.

14 THE COURT: -- severance expenses which may or may  
15 not be triggered. For purposes of my evaluating the fairness  
16 of the overall proposed breakup fee and expense reimbursement  
17 as a percentage of the transaction, not that I need to do that  
18 but frequently Courts are viewed as approving breakup fees  
19 within a certain market range. How should I view the fair  
20 value of the overall transaction?

21 MR. MILLER: I think, Your Honor, if you start with  
22 the billion seven hundred million dollars, which is the cash  
23 component, as Your Honor obviously read in the papers, there  
24 will be an exposure for 2.5 billion dollars in connection with  
25 the retention of these 10 to 12,000 employees.

1 In addition to that, Your Honor, in connection with  
2 the assumption and assignment of contracts, the cure amounts  
3 and other payments in connection with the contracts, are  
4 estimated to be a billion five hundred million dollars. So we  
5 have four billion dollars right there, Your Honor.

6 In addition, Your Honor, the purchaser is paying 250  
7 million dollars for the goodwill of LBI. So there you have  
8 4,250,000,000 dollars in that respect, Your Honor.

9 And then, Your Honor, in the interim, LBI has entered  
10 into an arrangement with the prospective purchaser where  
11 there's a repo agreement in which they are backing up and  
12 allowing these repos to be settled and to be financed. In  
13 addition, if this goes forward, there will be a support  
14 agreement for this interim period of two or three days where  
15 Barclays Capital will be on premises, will be offering  
16 oversight and in the sole discretion, may be willing to advance  
17 some monies in the interim period.

18 So the problem we had, Your Honor, there are so many  
19 different elements in this transaction that to do the usual  
20 calculation of whether it should be two percent, three percent,  
21 etcetera, became enormously complex during the course of the  
22 proceedings. As Your Honor knows, as these transactions go up  
23 in value, very often the breakup fee goes up in value. And  
24 this -- if Your Honor just took the 1.7, I would say to Your  
25 Honor, it's above three percent, clearly above three percent.

1 THE COURT: I know. I did the calculation.

2 MR. MILLER: Yes, Your Honor. But this is -- again,  
3 I have to use the expression, this is such a unique  
4 transaction. And there's been so much effort and there is so  
5 much exposure. Senior executives at Barclays likewise, like  
6 the rest of us slaves, never went to sleep from Sunday right  
7 through last night.

8 So, I think, Your Honor, there's an extra quota of  
9 consideration that has to be given in connection with this  
10 transaction. And I would also bear in mind, Your Honor, that  
11 what are the prospects of a competitive bid. This is such a  
12 fragile asset. And it is not an asset that people did not know  
13 was for sale. For months now, Lehman Brothers has been  
14 pursuing strategic alternatives. The market has known that  
15 aspects of Lehman, or even all of Lehman, were available for  
16 purchase or investment. So that -- I'm not going to call it  
17 shopworn Your Honor, but that the public, the financial  
18 markets knew that these assets were for sale. And we had a  
19 benefit, Your Honor. We were lucky because Barclays had been  
20 negotiating to acquire Lehman. Unfortunately, that was one of  
21 the things that might have been but never turned into fruition.  
22 But as the part of that process, at least they had some  
23 familiarity. And that was not a long negotiation either, Your  
24 Honor. It was two days, basically. Unfortunately, because of  
25 various regulations in the UK, that transaction could not have



1 But as long as you know, I mean, if you're prepared, that's  
2 fine.

3 MR. MILLER: Yes, Your Honor. And, Your Honor, if  
4 Mr. Despins wants to debate the adjournment, if I may, I would  
5 adopt all the reasons in the argument Your Honor is making.

6 THE COURT: You've always been a wise advocate.

7 MR. DESPINS: I think I'll pass on that, Your Honor.

8 MR. MILLER: Your Honor, if I could go back at this  
9 point to the breakup fee, I would just note that if you took  
10 the cash that's coming out of this transaction and you took the  
11 cure amounts, the retention program, it comes up to 5.7 billion  
12 dollars. A hundred million dollars, Your Honor, is  
13 approximately two percent of that. Now, I grant you there's  
14 some flex in those other two items. But given the enormity of  
15 this transaction, Your Honor, from the debtors' perspective,  
16 and we actively negotiated this, Your Honor, it's not an  
17 unreasonable breakup fee. And if that's what gets the  
18 transaction moving forward and as Your Honor pointed out, the  
19 markets out there are very, very sensitive to what happens here  
20 today. The employees are waiting. I mean, one of the things  
21 filed -- I will withdraw. I was going to say something I  
22 shouldn't say, Your Honor. The employees were going to come  
23 down here en masse. It made me think of every time you have an  
24 airline case, when the pilots are here. But we didn't think  
25 that was necessary, Your Honor. There's just a lot of human